**INSPECTOR-GENERAL OF POLICE & ORS.**

**v.**

**RAJOO RAMASAMY**

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR LP
HASHIM YEOP SANI CJ
AJAIB SINGH SCJ
[CRIMINAL APPEAL NO. 51 OF 1988]
28 JANUARY 1989

***CRIMINAL LAW:*** *Detention under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 - Whether the inquiry officer is required to make an inquiry under s. 5(2) of the Act - Power imperative or discretionary.*

The applicant was detained for purposes of investigation under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985, on grounds that he was associated with trafficking activities. Subsequently, upon receiving the report of the inquiry officer under s.5(2) of the Act, the Deputy Minister of Home Affairs issued a detention order under s. 6 of the Act.

The applicant applied for a writ of *habeas corpus*, the trial Judge allowed the application on the ground that the detention was illegal as the Minister's order was issued without the proper report of the inquiry officer under s. 5(2) of the Act. He was of the view that the report submitted by the inquiry officer to the Minister was not a valid report in that the inquiry officer had failed to make an inquiry as required under s. 5(2) of the Act. The respondent appealed to the Supreme Court.

**Held:**

**[1]** That the inquiry officer has a discretion to decide whether to exercise any of the powers contained in subsection (3) of s. 5 of the Dangerous Drugs (Special Preventive Measures) Act 1985.

**[2]** Whether there is a need for the inquiry officer to involve any of the powers contained in subsection (3) would depend primarily on whether having regard to the complete report submitted by the police investigating officers, the inquiry officer could be satisfied there were reasonable grounds for believing that the applicant is associated with the trafficking activities.

**[3]** Only in cases where the inquiry officer on the report submitted to him, is unable to satisfy himself that there are reasonable grounds to found his belief that the need to exercise his discretion arises.

*[Appeal allowed.]*

**Legislation referred to:**
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), (3), 5(2), (3), 6, (1)

*For the appellants - Abu Talib bin Othman, AG (Mohd. Raus bin Shariff, DPP with him)*
*For the respondent - Darshan Singh; M/s. Darshan Singh & Co.*

**JUDGMENT**

**Abdul Hamid Omar LP:**

This is an appeal by the Inspector-General of Police, Minister of Home Affairs and Superintendent, Pusat Pemulihan Akhlak against the decision of Anuar J sitting at the Kuala Lumpur High Court in respect of an application for a writ of *habeas corpus* by the respondent, Rajoo s/o Ramasamy.

The learned Judge allowed the application and ordered that the respondent be set at liberty. The appellants are dissatisfied with the decision. Hence the appeal.

The six grounds of appeal may be briefly summarised as follows:

> that the learned Judge erred in law and in fact in holding that the detention of the respondent was illegal and null and void for reasons:
>
> (a) that the Minister's order was issued without proper report by the inquiry officer and that the report submitted by the inquiry officer to the Minister was not a valid report;
>
> (b) that the report was bad in law as the inquiry officer has failed to make proper enquiry, that is, he had failed
>
> (i) to enquire whether there were reasonable grounds for believing that the respondent had been or was associated with any activity relating to or involving the trafficking of dangerous drugs; (hereinafter described as "the trafficking activities");
>
> (ii) to call witnesses or procure other evidence or require the production of any document;
>
> to enable him to put up a report.

In short the learned Judge held that the Minister's order was a nullity on ground that it was founded on a report by the inquiry officer who failed to call witnesses for the inquiry.

The facts are that the respondent was arrested and detained for purposes of investigation under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (Act 316) ("the Act") on grounds that he had been and was associated with trafficking activities.

On 12 May 1988, Mohd. Ghazali bin Haji Maulud, the Principal Assistant Secretary of the Ministry of Home Affairs whose responsibilities include the processing of case files relating to orders of detention under the Act in his affidavit affirmed that he received the report of the inquiry officer to the Minister under s. 5(2) of the Act in respect of the respondent wherein the inquiry officer stated that he was satisfied that there are reasonable grounds for believing that the respondent had been associated with trafficking activities. On 13 May 1988, the Deputy Minister of Home Affairs issued an order under s. 6 of the Act.

The respondent applied to the High Court on 4 May 1988. The application was heard on 23 May 1988. The learned Judge allowed it on one ground: that the detention of the respondent was illegal and therefore null and void as the Minister's order was issued without the proper report of the inquiry officer under s. 5(2) of the Act. He was of the view that the report submitted by the inquiry officer to the Minister was not a valid report. According to the Judge, it was bad in law as the inquiry officer had failed to make an inquiry as required under s. 5(2) of the Act. The learned Judge held that it was imperative for the inquiry officer, upon receipt of the report submitted by the police officer under s. 3(3) of the Act, for the purposes of such inquiry to call witnesses or procure such other evidence or require the production of any document.

In effect what the learned Judge meant to say was that the inquiry officer had no option whatsoever in the matter, but was compelled by law to institute an inquiry by calling witnesses or procuring such other evidence. And since the inquiry officer had omitted to do that he could not therefore be said to have held an inquiry within the meaning of s. 5(2) of the Act.

For convenience and ease of reference we set out hereunder the relevant parts of ss. 3 and 5 of the Act.

3. (1) Any police officer may, with warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under subsection (1) of s. 6.

(2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under sub-section (12) of s. 6:

Provided that:

(a) he shall not be detained for more than twenty hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;

(c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by him, as the case may be, shall forthwith report to the Minister.

(3) The police officer making an investigation pertaining to a person arrested and detained under the section shall cause a copy of the complete report of the investigation to be submitted:

(a) to an inquiry officer appointed under sub-section (1) of s. 5; and

(b) to the Minister,

within such period as may be prescribed by the Minister by regulations made under this Act.

(4) Any person detained under the powers conferred by this section shall be deemed to be in lawful custody, and may be detained in any prison, or in any police station, or in any other place authorised generally or specially by the Minister.

***Dangerous Drugs (Special Preventive Measures)***

5. (1) There shall be appointed by the Minister in writing such number of inquiry officers as may be necessary for the purpose of this Act:

Provided that no police officer nor any person who is not legally qualified shall be appointed to be an inquiry officer.

(2) Upon receiving the report under subsection (3) of s. 3, the inquiry officer shall inquire whether there are reasonable grounds for believing that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs.

(3) An inquiry officer may, in his discretion for the purpose of subsection (2):

(a) require the attendance before him of a person detained under s. 3;

(b) procure and receive all such evidence, whether oral or in writing and whether the same be admissible or not under any written law for the time being in force relating to evidence or criminal procedure, which he may think necessary or desirable;

(c) summon and examine witnesses on oath or affirmation, and may for those purposes administer any oath or affirmation;

(d) require the production of any document or other thing in his opinion relevant to the case.

(4) An inquiry officer shall submit his report in writing to the Minister within such period as may be prescribed by the Minister by regulations made under this Act.

On close scrutiny of these provisions, our view is that the learned Judge had erred in law. These provisions clearly reveal, first, a police officer is empowered to arrest and detain without warrant for the purpose of investigation any person in respect of whom he has reason to believe there are grounds would justify the detention under s. 6(1) of the Act (s. 3(1) of the Act). Second, the Minister is empowered under s. 6(1) to order detention and restriction of persons associated with trafficking activities where he is satisfied in the interest of public order that such person be detained. Sub-section (3) of s. 3 directs the police officer making the investigation on the person arrested and detained to cause a copy of a complete report of the investigation to be submitted to an inquiry officer and to the Minister. It is upon receipt of such report that the inquiry officer is required to enquire whether there are reasonable grounds for believing that such person has or is associated with trafficking activities (s. 5(2)). Basically the question is what constitutes an inquiry within the meaning of s. 5(2) of the Act. The learned Judge formed the view that it is imperative for the inquiry officer to apply the provisions contained in paras. (a) to (d) of s. 5(3) of the Act (hereafter called "the relevant paragraphs") and was therefore compelled to call witnesses for the purposes of such inquiry.

Fundamentally, the learned Judge came to that conclusion on the strength of the words "shall inquire" appearing in s. 5(2). But where he went wrong was that he completely omitted to consider the opening words of sub-section (3) which reads:

An inquiry officer may, in his discretion, for the purpose of subsection 2 require:

(a) require etc.

(2) ...

These words were crucial to a proper interpretation of the meaning of "inquiry" under s. 5(2) of the Act.

If the learned Judge had given due regard to these words, he would not, in our view, have come to the conclusion that he did. The language used in s. 5 of the Act is crystal clear.

In our view, the words used in sub-section (2) read in the light of the whole of sub-section (3) make it abundantly clear that discretion rests with the inquiry officer. It is for the inquiry officer in a particular case to decide whether to exercise any of the powers. In other words it is for the inquiry officer to decide whether, for the purpose of the inquiry, to invoke any of the powers in the relevant paragraphs. Whether there is a need to do so would depend primarily on whether, having regard to the complete report submitted to him by the police investigating officer and on the materials submitted he could be satisfied there were reasonable grounds to found his belief. If an inquiry officer is satisfied, after examining and considering the materials contained in the complete report, that there are reasonable grounds for believing that such person has been or is associated with trafficking activities, the need to call any witness or to procure any document does not arise. It is therefore only in cases where the inquiry officer, on the materials contained in the report submitted to him, is unable to satisfy

himself that there are reasonable grounds to found his belief that such person is associated in trafficking activities, that the need to exercise his discretion arises. It would perhaps be proper to say that he ought to exercise the discretion, if it is only by so doing that he can properly decide.

In our judgment, therefore, the learned Judge erred in law in holding that it is imperative for the inquiry officer to invoke the powers contained in the relevant paragraphs to constitute a valid inquiry under sub-section (2) of s. 5 of the Act. The duty is that of the inquiry officer to be satisfied there are reasonable grounds for believing that the person has been or is associated with trafficking activities. In carrying out his duty he has a discretion whether or not to call witnesses. And it is not mandatory that he should invoke the powers contained in sub-section (3) of s. 5 of the Act.

We feel that the learned Judge imposed on the inquiry officer a heavier burden than that imposed on him by the legislature.

Accordingly, the order of the learned Judge is set aside and substituted therefore with an order of dismissal of the application of the respondent.

Also found at [1989] 1 CLJ 1039